

**REMARKS**

This communication is responsive to the Examiner's Report mailed 3 December 2008, as extended, where applicable, under 37 C.F.R. § 1.136(a) by payment of appropriate extension of time fees.

Claims 1-7, 12-18, 20-32, 34-41, 43-45 and 47-56 were pending prior to this amendment. Claims 15, 17, 20, 27, 28, 31, 32, 34-40 were withdrawn pursuant to a species election. The Examiner has constructively withdrawn claim 56 as being directed toward an invention that is independent or distinct from the previously presented invention.

In this amendment, the Applicant has:

- cancelled claims 18, 21 and 41 and 43-45; and
- added new claims 57-59.

New claims 57-59 are submitted to be completely supported by the application as originally filed and to add no new matter.

After this amendment, claims 1-7, 12-14, 16, 22-26, 29, 30, 47-55 and 57-59 are pending for examination and have not been withdrawn.

**Claims 1-7, 12-14, 16, 22-26, 29, 30, 50-55**

The Examiner raises the combination of STEELER INC. – Deflection Track (Steeler), US patent No. 7,223,043 (Andrews), US patent No. 6,115,984 (Paradis) and US patent No. 3,999,875 (Simon) in connection with the patentability of claims 1-7, 12-14, 16, 22-26, 29, 30, 50-55. The Applicant submits that claims 1-7, 12-14, 16, 22-26, 29, 30, 50-55 patentably distinguish the combination of these references.

As correctly identified by the Examiner on page 2 of the Office Action, Steeler does not disclose or suggest the particulars of the “deformable portion” recited in claim 1. More particularly, Steeler fails to teach or suggest “each leg comprising a deformable portion located between the web and a distal edge of the leg; wherein each deformable portion is bent along four or more

longitudinally-extending bend lines to form four or more corresponding bends and each of the bends is at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle.”

Andrews, Paradis and Simon, alone or in combination, fail to remedy this deficiency.

Andrews

The Examiner expresses the view, on page 3 of the Office Action, that Andrews discloses V-shaped indents (20, 21) that are deformable and refers to col 10, ln. 39-44 and Figure 6 to support his contention. The Applicant submits that the Examiner has misinterpreted this aspect of Andrews and that Andrews fails to teach or suggest a number of the features of claim 1 “deformable portions”. More particularly:

- The Andrews track indents (20, 21) are used to engage corresponding V-shaped indents (9, 10) on studs (2) when studs (2) are pivoted into place as shown in Figures 2 and 3 (see arrow 22). Andrews does not teach or suggest that V-shaped indents (20, 21) are deformable. Moreover, Andrews teaches directly away from the deformability of V-shaped indents (20, 21) by stating that once studs (2) are rotated into place (i.e. to engage indents (20, 21)), “there is no inherent flexibility in the positioning of the studs” (col. 9, ln. 54-57) and “relative movement between stud and plate is not available once the members are fitted” (see col. 9, ln. 59-64). The Andrews studs (2) are not mobile, because the indents (20, 21) are not deformable;
- col. 10, ln 39-44 of Andrews merely refers to telescoping studs (41, 42) wherein telescoping element (42) fits inside telescoping element (41) such that the studs can slidably extend or retract to provide different lengths. Slidable telescoping movement is not deformation; and
- Figure 6 of Andrews illustrates an end-view of the stud and track of the Andrews joining arrangement. The dashed lines shown in Figure 6 are used merely to refer to acute and obtuse angles (101, 103) of the V-shaped indents (20, 21) – see col. 11, ln. 46-50.

Neither the cited aspects nor any other aspects of Andrews disclose or suggest the particulars of the claim 1 “deformable portions”. More particularly:

- Andrews fails to teach or suggest deformable portions “bent along four or more longitudinally extending bend lines to form four or more corresponding bends” as recited in claim 1. As discussed above, Andrews fails to teach or suggest deformable portions. Even the indents (20, 21) referred to by the Examiner (which are not deformable) are “V-shaped” and therefore incorporate at most three bends; and
- Andrews fails to teach or suggest a deformable portion wherein each of its four or more bends is “at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle” as recited in claim 1. In contrast, the Andrews V-shaped indents (20, 21) engage corresponding indents (9,10) on studs (2) and Andrews expressly states that once engaged in this manner, studs (2) cannot move. Since movement of studs (2) would accompany compression or expansion of the bends of V-shaped indents (20, 21), it follows that the bends of the Andrews indents (20, 21) are not compressible or expandable.

Based on this reasoning, the Applicant submits that the addition of Andrews fails to overcome the deficiencies of Steeler.

### Paradis

The Examiner expresses the view, on page 3 of the Office Action, that Figure 2 of Paradis discloses a runner for receiving the ends of studs having a deformable portion (42, 44) bent along four or more bend lines. The Applicant submits that the Paradis features (40, 42), referred to by Paradis as “base strip (40)” and “flange strip (42)” are missing a number of the particulars of the claim 1 “deformable portions”. More particularly:

- Paradis fails to teach or suggest deformable portions “bent along four or more longitudinally extending bend lines to form four or more corresponding bends” as recited in claim 1. As is clearly seen from Figure 2 of Paradis:
  - the Paradis base strips (40) and flange strips (42) are V-shaped and have only three bends, not four bends as recited in claim 1.

- none of the bend lines of the Paradis base strips (40) or flange strips (42) extend in the longitudinal direction as recited in claim 1. In contrast, all of the bend lines in the Paradis base strips (40) and flange strips (42) extend in directions orthogonal to the longitudinal direction; and
- The claim 1 “deformable portions” are recited to be located on the legs of the claim 1 track. In contrast, the Paradis base strips (40) are located on the web portion of the Paradis runner. Only the Paradis flange strips (42) are located on the legs of the Paradis runner. Claim 1 recites that deformation “is accompanied by relative movement of the distal edge of the leg in a direction that is at least one of: toward the web and away from the web.” Deformation of the Paradis flange strips (42) – i.e. the only Paradis deformable feature located on the leg – is not accompanied by movement of the distal edge of the leg toward or away from the web. In contrast, deformation of the Paradis flange strips (42) causes movement of the leg in the longitudinal direction.

Based on this reasoning, the Applicant submits that the addition of Paradis fails to overcome the deficiencies of Steeler and Andrews.

#### Simon

Simon teaches directly away from the “deformable portion” recited in claim 1. More particularly, Simon teaches that the “triple sigma” shape of indents (EGIK, FHJL) is used to increase the rigidity of the sidewalls of the elongate members (1). The express teaching of rigidity described by Simon is reinforced by the following statements:

The present invention makes it unnecessary to use struts by employing, on the one hand, a novel type of shaped member, both for the uprights and the cross-pieces, the cross-sectional shape of which provides greater geometrical inertia, or a more stable geometry, and enables it better to withstand flexure and torsion ...

(see col. 1, ln. 38-44)

The foregoing embodiments are described by way of example, and it is to be understood that many modifications may be made without exceeding the scope of

the invention as defined by the appended claims, and whilst achieving the object which is to strengthen the cross-sectional configuration common to the uprights and cross-pieces by means of trapezoidal recesses or portions which give it a “triple sigma” shape ...  
(see col. 4, ln. 17-30)

Based on these statements, Simon clearly teaches that its “triple sigma” shaped indents are used to stiffen the elongate members (1) and to otherwise combat flexure. Moreover, Simon describes this increased rigidity to be an object of the Simon invention. This aspect of Simon clearly teaches away from the claim 1 “deformable portion ... wherein each deformable portion is bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and each of the bends is at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle.”

Simon expressly teaches that the shape of its sidewalls enhances rigidity (i.e. directly away from the deformability recited in claim 1). The Applicant submits, therefore, that one skilled in the art would not look to Simon to obtain the particulars of the deformable portions missing from Steeler, Andrews and/or Paradis. Moreover, one skilled in the art would not consider it obvious to incorporate the Simon “triple sigma” shaped indents “to provide the track with more versatility in bending”, as contended by the Examiner at page 3 of the Office Action, because the Simon “triple sigma” shape is expressly taught to increase rigidity (i.e. to decrease deformability).

Furthermore, modifying the Steeler deflection track to include the sidewalls of the Simon elongate members would prevent the operation of the Steeler deflection track. The Steeler deflection track is used for “ceiling connection of non-load bearing walls” – see Steeler (left hand column). In order to use the Steeler deflection track for this purpose, it is necessary to attach the tops of studs to the track in a manner which facilitates “ceilings to deflect under loading without affecting the wall beneath” – see Steeler (left hand column). The Steeler drawing shows a fastener which appears to be used for this purpose - i.e. to attach studs to the sidewall of the deflection track. The legs of the Simon elongate members include inwardly extending tail sections (CA and BD – see Figure 1). The tail sections (CA and BD) of the Simon legs would

prevent attachment of studs in a manner disclosed by Steeler and would therefore prevent the operation of the Steeler apparatus to permit ceiling deflection. The Applicant submits that the skilled artisan would not consider it obvious to modify the Steeler deflection track using the shape of the Simon legs, because the shape of the Simon legs would prevent the proper operation of the Steeler apparatus.

For these reasons, the Applicant submits that the addition of Simon fails to overcome the deficiencies of Steeler, Andrews and Paradis.

Conclusions for Claims 1-7, 12-14, 16, 22-26, 29, 30 and 50-55

Based on the reasoning presented above, the Applicant submits that claim 1 patentably distinguishes the combination of Steeler, Andrews, Paradis and Simon. Claims 2-7, 12-14, 16, 22-26, 29, 30 and 50-55 depend from claim 1 and are submitted to patentably distinguish the combination of Steeler, Andrews, Simon and Paradis for at least this reason.

New Claim 57

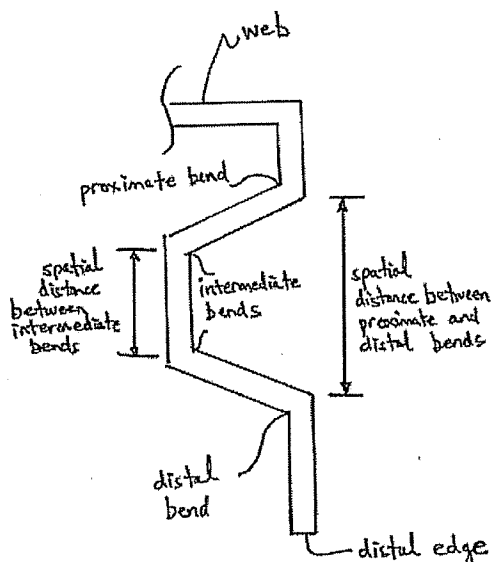
The Applicant has added new claim 57. The Applicant submits that new claim 57 is completely supported by the application as originally filed and adds no new matter. Claim 57 depends from claim 1 and is submitted to be patentable over the prior art of record for at least the reasons set out above.

The Applicant submits further that new claim 57 recites its own features that are patentable over the prior art of record. More particularly, claim 57 recites that the four or more bends of the claim 1 “deformable portion” comprise: a proximate bend at a location along the leg between the deformable portion and the web; a distal bend located along the leg between the deformable portion and the distal edge of the leg; and a pair of intermediate bends located along the leg between the proximate bend and the distal bend. Claim 57 recites further that the deformable portion is deformable between:

- a relatively “expanded configuration wherein proximate bend and the distal bend are spatially further apart from one another than the intermediate bends are from one another”; and

- a relatively “compressed configuration wherein the proximate bend and the distal bend are spatially closer to one another than the intermediate bends are to one another”.

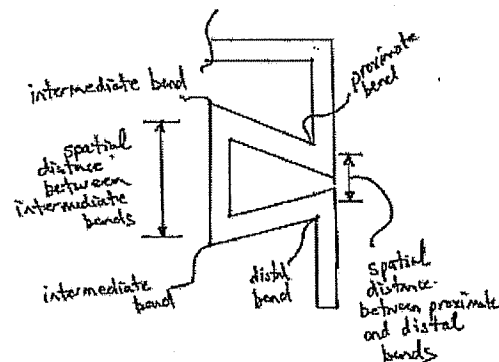
This claim 57 combination of features is illustrated with the help of the following drawings, which are substantially similar to Figures 3C and 3D of the originally filed application with some of the annotation removed and some additional annotation added to illustrate the features of claim 57.



EXPANDED CONFIGURATION  
 (SEE FIG. 3C)

- ⇒ spatial distance between proximate and distal bends greater than spatial distance between intermediate bends
- ⇒ opening of groove relatively wide (compared to interior of groove)

T  
 left



CONTRACTED CONFIGURATION  
 (SEE FIG. 3D)

- ⇒ spatial distance between proximate and distal bends less than spatial distance between intermediate bends
- ⇒ opening of groove relatively narrow (compared to interior of groove)

he  
 t

hand drawing of the “expanded configuration” (corresponding to Figure 3C) clearly shows that the spatial distance between the proximate and distal bends is greater than the spatial distance between the intermediate bends. The right hand drawing of the “contracted configuration” (corresponding to Figure 3D) clearly shows that the spatial distance between proximate and distal bends is less than the spatial distance between the intermediate bends. The Applicant submits that the prior art of record fails to teach or suggest these features of claim 57. Accordingly, claim 57 is submitted to patentably distinguish the prior art of record.

#### **New Claim 58**

The Applicant has added new claim 58. The Applicant submits that new claim 58 is completely supported by the application as originally filed and adds no new matter. Claim 58 depends from claim 1 and is submitted to be patentable over the prior art of record for at least the reasons set out above.

The Applicant submits further that new claim 58 recites its own features that are patentable over the prior art of record. More particularly, claim 58 depends from claim 3 and recites that the claim 3 “deformable groove” is:

- “expandable to a relatively expanded configuration wherein an opening of the groove is wider ... than an interior of the groove”; and
- “compressible to a relatively compressed configuration wherein the opening of the groove is narrower ... than the interior of the groove”.

This claim 58 feature is also shown in the drawings reproduced above. The left hand drawing of the “expanded configuration” (corresponding to Figure 3C) clearly shows that the opening of the groove in the leg is relatively wide in comparison to that of the right hand drawing of the “contracted configuration” (corresponding to Figure 3D). The Applicant submits that the prior art of record fails to teach or suggest these features of claim 58. Accordingly, claim 58 is submitted to patentably distinguish the prior art of record.



### **New Claim 59**

The Applicant has added new claim 59. The Applicant submits that new claim 59 is completely supported by the application as originally filed and adds no new matter. The Applicant submits further that new claim 59 recites features that are patentable over the prior art of record.

Claim 59 recites features that are similar to those of claim 58 described above. More particularly, claim 59 recites a track comprising a web and one or more legs that extend from the leg, where each leg comprises a “deformable groove” that is:

- “deformable to a relatively expanded configuration wherein an opening of the groove is wider ... than an interior of the groove”; and
- “deformable to a relatively compressed configuration wherein the opening of the groove is narrower ... than the interior of the groove”.

As discussed above, the prior art of record fails to teach or suggest this claim 59 combination of features. The Applicant submits, therefore, that claim 59 patentably distinguishes the prior art of record.

### **Additional Comments Claim 30**

Claim 30 depends from claim 1 and is submitted to patentably distinguish the combination of Steeler, Andrews, Paradis and Simon for at least the reasons described above. The Applicant respectfully submits that claim 30 recites additional features which patentably distinguish the combination of Steeler, Andrews, Simon and Paradis.

Claim 30 (when including the claims from which it depends) recites that the track is used in a building wall comprising an “opposing track and one or more studs” and that the “opposing track is substantially similar to the track and an opposing end of each stud is coupled to the opposing track in a manner that permits relative movement between the stud and a web of the opposing track.” This feature is not disclosed by Steeler.

In fact, Steeler teaches directly away from this claim 30 feature by expressly stating that its deflection track is used “for ceiling connection” and walls are formed using “standard lower

track". Steeler expressly states its deflection track is for "ceiling connection of non-load bearing walls" in a manner which allows "ceilings to deflect under loading without affecting the wall beneath" – see Steeler (left hand column). For application to ceiling connection, the Steeler deflection track has to be oriented to provide a downwardly opening channel for connection to the tops of studs. Under the paragraph labeled "1)" in the right hand column, Steeler also expressly states that "standard lower track is used in these walls." Accordingly, Steeler expressly teaches that the upper track and lower track are different – i.e. the upper track is "deflection track" and the lower track is "standard lower track".

The additional references cited by the Examiner (Andrews, Paradis and Simon) fail to remedy this deficiency.

Accordingly, the Applicant submits that claim 30 further patentably distinguishes the combination of Steeler, Andrews, Paradis and Simon.

#### **Claims 47-49**

The Examiner has raised the combination of Steeler, Andrews, Simon and Paradis in connection with claims 47-49. The Applicant submits that claims 47-49 patentably distinguish the combination of Steeler, Andrews, Paradis and Simon.

Claim 47 recites a track having a pair of legs "wherein at least one of the one or more legs comprises a deformable portion bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and deforming the one or more legs comprises at least one of: compressing at least one of the four or more bends to reduce its interior angle and expanding at least one of the four or more bends to increase its interior angle."

As correctly identified by the Examiner, Steeler fails to disclose these features of the claim 47 "deformable portion". For the reasons discussed in detail above, the combination of Andrews, Paradis and Simon fail to remedy this deficiency. More particularly, Andrews, Paradis and Simon fail to disclose (alone or in combination) the features of the claim 47 "deformable portion" which are missing from Steeler. Furthermore, it would not be obvious to modify Steeler to incorporate

the features of Simon or to otherwise combine Steeler with Simon to obtain the particulars of the claim 47 “deformable portions”, since Simon expressly discloses that the “triple sigma” shaped indents are used to stiffen the elongate members and to otherwise combat flexure – i.e. Simon teaches directly away from providing “deformable portions”.

Based on this reasoning, the Applicant submits that claim 47 patentably distinguishes the combination of Steeler, Andrews, Paradis and Simon. Claims 48 and 49 depend from claim 47 and are submitted to be patentable in relation to the combination of Steeler, Andrews, Paradis and Simon for at least this reason.

#### **Claim 56**

The Examiner expresses the view, on page 2 of the Office Action, that claim 56 is directed toward an invention that is independent or distinct from the originally claimed invention and has constructively withdrawn claim 56 from consideration.

The Applicant respectfully requests that the Examiner reconsider her withdrawal of claim 56. While claim 1 is directed toward a track, claims 22-26, 29 and 30 are directed toward the use of a track in a building system that comprises the claim 1 “track”, an “opposing track” and “one or more studs”. These features of claims 22-26, 29 and 30 are similar to the “lower track”, “upper track” and “plurality of studs” recited in claim 56. For this reason, the Applicant submits that Examination of claim 56 would not require a separate search and could be examined together with the previously pending claims.

Based on this reasoning, the Applicant respectfully requests that the Examiner reconsider her decision to constructively withdraw claim 56.

#### **Rejoinder Request**

Claims 15, 17, 20, 27, 28, 31, 32 and 34-40 were withdrawn pursuant to a species election pending the allowance of a generic claim. The Applicant submits that independent claim 1 is generic to all of the species identified by the Examiner and is allowable for the reasons discussed above.

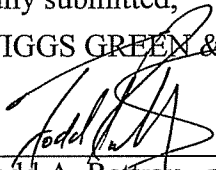
Accordingly, the Applicant submits that claims 15, 17, 20, 27, 28, 31, 32 and 34-40 (which depend from claim 1) are entitled to consideration as provided by 37 CFR § 1.141 and requests rejoinder of these claims.

**Conclusions**

In view of the amendments and arguments presented above, the Applicant submits that this application is now in condition for allowance and respectfully requests reconsideration and allowance of this application.

Respectfully submitted,  
OYEN WIGGS GREEN & MUTALA LLP

By:

  
\_\_\_\_\_  
Todd A. Rattray  
Registration No. 60,483  
tel: 604.669.3432 ext. 9041  
fax: 604.681.4081  
e-mail: tardocket@patentable.com